



Nevada State Board of Medical Examiners

*** * * M I N U T E S * * ***

OPEN SESSION BOARD MEETING

**Held in the Conference Room of the
Nevada State Board of Medical Examiners**

1105 Terminal Way, Suite 301, Reno, NV 89502

videoconferenced to

the Nevada State Board of Dental Examiners

2295 B Renaissance Drive, Las Vegas, NV 89119

FRIDAY, MARCH 12, 2004 - 9:00 a.m.

and

SATURDAY, MARCH 13, 2004 - 8:30 a.m.

Board Members Present

Cheryl A. Hug-English, M.D., President

Jaculine C. Jones, Ed.D., Vice President

Donald H. Baepler, Ph.D., D.Sc., Secretary-Treasurer

Joel N. Lubritz, M.D.

Robin L. Titus, M.D.

Marlene J. Kirch

Stephen K. Montoya, M.D.

Sohail U. Anjum, M.D.

Javaid Anwar, M.D.

Staff Present

Larry D. Lessly, J.D., Executive Secretary/Special Counsel

Drennan A. Clark, J.D., Deputy Executive Secretary/Special Counsel

Laurie L. Munson, Deputy Executive Secretary

Richard J. Legarza, J.D., General Counsel

Stephen D. Quinn, Deputy General Counsel

Lynnette L. Krotke, Chief License Specialist

Douglas C. Cooper, Chief Investigator

Trent S. Hiatt, Investigator (present in Las Vegas)

Also Present

Charlotte M. Bible, J.D., Chief Deputy Attorney General

Timothy D. Coughlin, President, Nevada Health Professionals Assistance Foundation

Arne D. Rosencrantz, Director, Board of Directors, Nevada Health

Professionals Assistance Foundation

Roger Belcourt, M.D., Nevada Health Professionals Assistance Foundation

John B. Lanzillotta, P.A.-C, Physician Assistant Advisory Committee Member

Michael J. Garcia, R.R.T., Practitioner of Respiratory Care Advisory Committee Member

Robert D. Fisher, President & CEO, Nevada Broadcasters Association

FRIDAY, MARCH 12, 2004

Agenda Item 1

CALL TO ORDER AND ANNOUNCEMENTS - Cheryl A. Hug-English, M.D., President

The meeting was called to order by Cheryl A. Hug-English, M.D., President, at 9:05 a.m.

Agenda Item 2

APPROVAL OF MINUTES

- December 5 & 6, 2003 Board Meeting - Open/Closed Sessions

Dr. Lubritz moved to accept the minutes of the December 5 & 6, 2003 Board Meeting - Open/Closed Sessions. Mrs. Kirch seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Agenda Item 3

PERSONNEL

Open Session

- Consider and Discuss Additional Staff Requirements:

- Deputy General Counsel
- Investigator(s)
- License Specialist

Mr. Lessly explained that both the General Counsel and Deputy General Counsel continue to be extremely busy and it appears the Board will need another attorney when Mr. Legarza retires. He requested authority to immediately hire a new Deputy General Counsel to begin the training process before Mr. Legarza retires.

Mr. Clark told the Board that due to an increasing number of applications and renewals, one License Specialist currently has 52 new application files she is unable to open and others have 40 or more, and it is clear they need an additional License Specialist to handle the increased workload. He recommended the Board hire the new License Specialist at entry-level wage, with a review and possible salary increase after six months. He stated no additional office space would be required to house this additional employee.

Mr. Clark then explained that there has been an increase in complaints and administrative work in the Investigations Division, due in part to the Legislature abolishing the Medical-Legal Screening Panel, and this increase warrants hiring two additional Investigators. In Nevada's sister states, the caseload is 30-50 cases per Investigator; in Nevada, it is 100 cases or more per Investigator. He recommended hiring the two additional Investigators effective July 1, 2004, at an entry-level salary of \$38,000, with a review and possible salary increase after six months. These two positions will require additional computer equipment and office space. He told the Board there is office space available on the first floor of the building and if the Board approved, he would enter into negotiations with the building owner to acquire it.

Dr. Baepler stated there is enough money in the budget for the additional salaries, equipment and office space, and that he felt if there is office space available we should acquire it. He commented that the need for an additional License Specialist is good news because it shows more health professionals want to move to Nevada to practice medicine.

Dr. Baepler made a motion to authorize the hiring of a new Deputy General General, an additional License Specialist and two additional Investigators. Dr. Jones seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Agenda Item 7

COMMITTEE REPORT ON REVIEW OF BOARD'S PUBLIC SERVICE ANNOUNCEMENT PROGRAM

Dr. Montoya stated the Committee met with Nevada Broadcasters Association concerning a comprehensive campaign to get the word out about what the Nevada State Board of Medical Examiners is and what it does. The Nevada Broadcasters Association listened to what the Committee had to offer and came up with several ideas. The Committee will review the proposals and present them to the Board. The current ads will be phased out and new ads substituted in their place.

Mr. Clark told the Board one idea was to have people such as Senator Bryan, Senator Raggio, and other well-known people do advertising spots, and also to have a doctor, possibly Dr. Tony Alamo, do a spot in Spanish.

Dr. Hug-English stated that consideration of continuation of the contract with Nevada Broadcasters Association is also on the agenda and there are two questions the Board needs to decide when considering that item: (1) whether to continue the contract; and (2) whether these new scripts are what the Board wants.

Agenda Item 15

REPORTS

- Diversion Program: *Quarterly Report* - Timothy D. Coughlin, M.D., President;
Bradley J. Thompson, M.D., Medical Director; Arne D. Rosencrantz, Director, Nevada Health Professionals Assistance Foundation
- Physician Assistant Advisory Committee - John B. Lanzillotta, P.A.-C, and Dan Hickey, P.A.-C, Advisory Committee Members
- Practitioner of Respiratory Care Advisory Committee - Michael J. Garcia, R.R.T., Advisory Committee Member
- Investigative Committees - Donald H. Baepler, Ph.D., D.Sc., Secretary-Treasurer, Chairperson
Joel N. Lubritz, M.D., Chairperson
Richard J. Legarza, J.D., General Counsel
Stephen D. Quinn, J.D., Deputy General Counsel
Douglas C. Cooper, Chief Investigator
 - Consideration of Cases Recommended for Closure by the Committees
 - Status of Investigative Case Load
 - Status of Recruitment of Peer Reviewers
- Secretary-Treasurer - Donald H. Baepler, Ph.D., D.Sc., Secretary-Treasurer
 - Status of Finances

**- Diversion Program: *Quarterly Report* – Timothy D. Coughlin, M.D.
President; Bradley J. Thompson, Medical Director; Arne D. Rosencrantz, Director;
Nevada Health Professionals Assistance Foundation**

Arne D. Rosencrantz, member of the Nevada Health Professionals Assistance Foundation's Board of Directors, stated the Foundation has made strides since the December meeting of the Nevada State Board of Medical Examiners. He introduced Timothy D. Coughlin, President; Roger Belcourt, M.D., Director; Bradley J. Thomson, M.D., Interim Executive Director/Medical Director; and Peter Mansky, M.D.

Dr. Thompson stated the Diversion Program is in its ninth year. Victor Rueckl, M.D. resigned due to a personality conflict with Sunrise Hospital and Carol Bowers, R.N. resigned to take a position in Atlanta. The Foundation performed a national search and selected Dr. Mansky to replace Dr. Rueckl and May 7 is the target date for Dr. Mansky to assume those duties. They have combined the Executive and Medical Directorships, as they think it is redundant to have two separate directorships. Dr. Thompson will remain Interim Executive Director/Medical Director until Dr. Mansky obtains his license to practice medicine in Nevada. Dr. Thompson went on to say there are currently 49 physicians, 2 physician assistants and 10 respiratory therapists in the program with active contracts. The program is financially solvent, with 2-1/2 months' operating expenses in reserve. They have taken steps to increase the reserves; they have increased client fees slightly and are working on reducing balances owed to the program. They also have a verbal commitment from the Board of Osteopathy and may get support from the medical societies. They may also approach the Dental Board and may consider formalized contracts with hospitals. In his brief tenure since Carol Bowers left, he has been happy with the relationship between the board and staff. They have strong Diversion Committees in both the north and south.

Dr. Mansky thanked the Board for the opportunity to speak to the Board and stated he has watched the Diversion Program and thinks by using outreach and education, they can identify physicians with problems before they reach the level of problems with patient care.

Dr. Hug-English welcomed Dr. Mansky and stated the Board looks forward to working with him. She stated the Board appreciates the work the Diversion Program has done in the past and appreciates Dr. Mansky stepping in at a tough time. The Board supports, and will continue to support and appreciate, the program

**- Physician Assistant Advisory Committee – John B. Lanzillotta, P.A.-C;
Dan Hickey, P.A.-C**

John B. Lanzillotta, P.A.-C told the Board Physician Assistants are constantly working in situations involving end-of-life care, where a delay in pronouncement of death can be traumatic for families, and currently R.N.s are legally authorized to pronounce death but Physician Assistants are not. He feels it would be helpful if Physician Assistants were also authorized to pronounce death and he would appreciate the Board's input on changing the statute accordingly.

Mr. Legarza explained that he and Mr. Lanzillotta have talked about this in the past and if this is something the Board thinks Physician Assistants should do, a member could propose a BDR at the next Legislative session.

Mr. Lanzillotta explained the idea came from one Physician Assistant who works with other Physician Assistants in Hospice.

Mr. Lessly stated the Board will be considering a legislative package at the June meeting and suggested Mr. Lanzillotta refer the matter to Mr. Legarza for inclusion in the legislative package at that time.

Mr. Lanzillotta stated that pronouncement of death is written into the Model Physician Assistant legislation, but it has been considered state by state and he doesn't know the number of states which have included it in their legislation.

Edwin Kingsley, M.D. stated the Clark County Medical Society is not against a change in legislation to allow Physician Assistants to pronounce death, but as a member of Hospice he was never aware of a problem with pronouncement of death by R.N.s who have been delegated that authority by physicians.

Dr. Anwar stated he sees no reason why Physician Assistants should not be authorized to pronounce death in addition to R.N.s, and Dr. Lubritz agreed.

Dr. Hug-English instructed the Board's legal team to include the proposal in the Board's legislative packet for discussion at the June meeting.

- Practitioner of Respiratory Care Advisory Committee – Michael J. Garcia, R.R.T.

Mr. Garcia stated the Practitioner of Respiratory Care Advisory Committee will be requesting a BDR from the Board to revise the Nevada Revised Statutes to reflect that Practitioners of Respiratory Care do not have to have separate licenses to draw arterial blood gases, as it is part of their scope of practice. Additionally, it has come to the attention of practitioners that EMTs are providing patient respirator monitoring care, and he has received concerns from practitioners related to the qualifications of those who perform these services. Therefore, they have approached the Department of Health for a determination as to who is qualified to perform these services. He then inquired as to how renewal of licenses for practitioners of respiratory care was proceeding.

Dr. Hug-English stated she thinks licensure for blood gases preceded practitioners of respiratory care and that is why it has been licensed separately.

Mr. Legarza explained he had tried informally to change it, but the Bureau of Licensure & Certification was opposed to it because it is revenue for them.

Dr. Hug-English stated the Committee could request a BDR with no objection from the Board.

- Secretary-Treasurer - Donald H. Baepler, Ph.D., D.Sc., Secretary-Treasurer
- Status of Finances

Dr. Baepler reviewed the distributed Board *Balance Sheet as of March 11, 2004*, and *Profit & Loss Budget vs. Actual July 1, 2003 through March 11, 2004*, for the members.

Dr. Anwar moved to approve the financial documents. Dr. Montoya seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Agenda Item 4

CONSIDERATION OF ADOPTION OF PROPOSED AMENDMENTS TO NEVADA
ADMINISTRATIVE CODE CHAPTER 630: REQUIREMENTS FOR BIENNIAL
REGISTRATION, AND PUBLIC HEARING TO RECEIVE COMMENTS

- Donald H. Baepler, Ph.D., D.Sc., Secretary-Treasurer
- Richard J. Legarza, J.D., General Counsel
- Stephen D. Quinn, J.D., Deputy General Counsel

Dr. Hug-English stated the continuing competency of physicians is an issue the Board thought was important to look at. The committee, chaired by Dr. Baepler, has done a lot of work on the issue and held workshops to receive public comment, and the purpose of this meeting is to receive additional comments and then allow for Board discussion.

Sidney Zimmet, M.D. told the Board he has been a practicing physician in Nevada for the past 34 years. He stated this issue was discussed a year ago, and the NSMA, rural clinics, the public health department and everyone else were unanimously against the proposed changes, and the recent modifications to the proposed changes were negligible. He doesn't know how taking proficiency exams will protect the public, and physicians are required to take CMEs each year to keep current. If these amendments were adopted, the Nevada Board would become the only one in the country to pass it, and if it passed, it would end up in court. He also thinks the screening panel was very valuable and should be reinstated.

Edwin Kingsley, M.D., on behalf of Joe Hardy, M.D., asked how the amended regulation would affect urban and rural family practitioners, who are already required to take exams every six years, as he does not know if the exam would meet the requirements of the proposed regulation amendments.

Dr. Baepler stated he believed the exam would likely qualify.

Don Bunch, M.D. told the Board he has practiced cardiovascular surgery in Las Vegas since 1973. He stated the proposed regulation amendments completely ignore and fail to address a very important and growing group of physicians – retired, non-practicing, uninsured physicians.

Dr. Hug-English stated the Board appreciated the public comments and she thanked the Committee for its hard work on a very complex, important issue.

Discussion by the Board members ensued concerning the proposed amendments to the regulation.

Motion by Dr. Montoya to table the proposed amendments to the regulation for the time being. Dr. Anjum seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Agenda Item 5

**CONSIDERATION OF AUDIT PERFORMED BY THE FEDERATION OF STATE MEDICAL
BOARDS OF THE UNITED STATES, INC. AS MANDATED BY THE NEVADA LEGISLATURE**

- Drennan A. Clark, J.D., Deputy Executive Secretary/Special Counsel

Mr. Lessly stated he had reviewed the audit by the Federation of State Medical Boards and the "white paper" by the Clark County Medical Society. Some of the suggestions made in the audit would be advantageous to implement, others would do nothing, and some would require legislation to implement.

Mr. Clark provided the Board with a detailed outline of the recommendations contained in the audit report and the recommendations of staff with regard thereto.

Dr. Anwar moved to approve the changes already implemented and to table discussion of the remainder of the recommendations in the audit until the June meeting. Mrs. Kirch seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Dr. Hug-English stated the audit was a very favorable report of the Board and it reinforces the fact that the Board is doing a good job. There is always room for improvement, but she appreciates every member and the work they do.

Agenda Item 6

**CONSIDERATION OF POSITION PAPER PREPARED BY THE CLARK COUNTY MEDICAL
SOCIETY**

- Edwin Kingsley, M.D., President, Clark County Medical Society

Edwin Kingsley, M.D. stated the Board strives to protect the interests of the citizens of Nevada, and the Clark County Medical Society agrees with many of the recommendations included in the audit. They appreciate most of the changes the Board is making, but there are items they respectfully disagree with. They think a public information officer would be more efficient than the public service announcements currently being used, electronic registration would be beneficial and could be biennial, the management and financial audits should be presented in a public meeting of the Board, licensure by endorsement should be continued, and they would encourage the Board to access the databank on a routine basis for malpractice awards and adjudications. They don't believe every malpractice case needs to be investigated, as approximately two-thirds of them are dropped. They agree with the spirit and letter of SB 250, but think sending letters to physicians for actions that do not rise to the occasion of censure or discipline would be prudent. They have a problem with publishing a statement of charges against a physician and think the actual findings of fact and conclusions of law against a physician should be published instead.

Discussion ensued concerning how and which physicians were polled by the Clark County Medical Society in preparation of its position paper. Dr. Lubritz challenged the name of the position paper of the Clark County Medical Society, as he had discussed the position paper with many of the previous officers and current members of the board of trustees, and they had not even had an opportunity to read the Federation of State Medical Boards' audit, much less have an opinion on it. Therefore, it was an opinion letter of Dr. Don Havins and Dr. Kingsley and not that of the Clark County Medical Society.

Dr. Kingsley stated the changes the Clark County Medical Society is suggesting are not adversarial; many have already been addressed by Board staff and they only disagree with a few.

Agenda Item 8

CONSIDERATION OF CONTINUATION OF CONTRACT WITH NEVADA BROADCASTERS ASSOCIATION FOR THE BOARD'S PUBLIC SERVICE ANNOUNCEMENT PROGRAM FOR APRIL 1 THROUGH JUNE 30, 2004

- Robert D. Fisher, President and CEO - Nevada Broadcasters Association

Robert D. Fisher, President and CEO of Nevada Broadcasters Association, appeared before the Board. He stated a public information officer has nothing to do with public service announcements or NCSAs; those are two totally different types of functions. What his company wants to address is the Board's public awareness campaign, and he would make the same presentation today as he did in December, adding that he has met with Tony Clark three times now and has submitted scripts for the Board's review. He thinks a 12-month contract is necessary for consistency and continuity. He stated there are three messages that need to be delivered: the mission of the Board, the quality of doctors in the state and directing people to the website for information. He stated that once the Board approves scripts, they could be on the radio in ten days and on television within two weeks. He feels the increase in the monthly cost to the Board for the Nevada Broadcasters Association's services from \$5,000 to \$6,000 is still a discount, as the usual charge is \$7,500 per month.

Dr. Hug-English suggested the matter be tabled until Saturday to give the Board members an opportunity to review the scripts and think about it.

Mr. Legarza stated an annual contract in this amount (\$72,000) would require going to the Board of Examiners and justifying a sole-source contract, which will take time and can't be done right away, but the Board could extend the contract for three months now and enter into an annual contract at a later date.

Agenda Item 9

CONSIDERATION OF REQUEST BY WASHOE MEDICAL CENTER FOR APPROVAL OF PRACTITIONER OF RESPIRATORY CARE TRAINING PROGRAMS PER NRS 630.047(1)(E) AND (F)(1)

Dr. Anjum moved to grant the request of Washoe Medical Center for approval of Practitioner of Respiratory Care training programs per NRS 630.047(1)(e) and (f)(1). Mrs. Kirch seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Agenda Item 10

DISCUSSION OF REGULATION AMENDMENT TO ALLOW RECERTIFICATION BY ABMS SUBBOARDS TO SATISFY THE REQUIREMENTS OF NEVADA ADMINISTRATIVE CODE CHAPTER 630 FOR LICENSURE ELIGIBILITY (NAC 630.080(1)(B)(5))

- Lynnette L. Krotke, Chief License Specialist

Ms. Krotke told the Board that from January 2004 to March 2004 the Licensing Division has received around 400 applications for physician licensure. Many of these physicians do not meet the requirements because the Board currently does not recognize recertification in subspecialties. She suggested that amending NAC 630.080(1)(B)(5) to allow ABMS subboard recertification would be a good way to enable additional qualified physicians to obtain licensure in the state.

Dr. Anjum stated he thought it was always the intent of the regulation to recognize subspecialties as a valid entry point.

Ms. Krotke explained that currently they are only accepting recertification in the primary specialty to meet the 10-year examination requirement.

Dr. Baepler moved to approve recertification by subspecialty boards approved by the American Board of Medical Specialties. Dr. Lubritz seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Dr. Hug-English stated this is just a clarification of the intent of the regulation and since subboard recertification exams are so thorough, the Board should accept them.

Agenda Item 15 **(CONTINUED)**

REPORTS

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Douglas C. Cooper, Chief Investigator
 - Consideration of Cases Recommended for Closure by the Committees
 - Status of Investigative Case Load
 - Status of Recruitment of Peer Reviewers
- Secretary-Treasurer - Donald H. Baepler, Ph.D., D.Sc., Secretary-Treasurer
 - Status of Finances

**INVESTIGATIVE COMMITTEES – Donald H. Baepler, Ph.D., D.Sc., Secretary-Treasurer,
Chairperson
Joel N. Lubritz, M.D., Chairperson
Richard Legarza, General Counsel; Stephen D. Quinn,
Deputy General Counsel; Douglas C. Cooper,
Chief Investigator**

- Consideration of Cases Recommended for Closure by the Committees
- Status of Investigative Case Load
- Status of Recruitment of Peer Reviewers

Dr. Baepler stated that Investigative Committee A authorized filing formal complaints in 13 cases, although many do not appear to rise to the level of license suspensions or revocations. Two cases were sent out for peer review, appearances were requested in 2 cases, 5 cases were referred back to investigative staff for further investigation and 48 cases were closed.

Dr. Lubritz stated that Investigative Committee B authorized filing formal complaints in 2 cases, 5 cases were sent out for peer review, appearances were requested in 3 cases, 7 cases were referred back to Investigations and 112 cases were closed.

Agenda Item 11

**DISCUSSION OF AMERICAN PSYCHIATRIC INSTITUTE SELF-ASSESSMENT
EXAMINATION INsofar AS IT SATISFIES THE REQUIREMENTS FOR LICENSURE BY
ENDORSEMENT UNDER NEVADA REVISED STATUTES CHAPTER 630.1605(2)(D)**

- Donald H. Baepler, Ph.D., D.Sc., Secretary-Treasurer

Dr. Baepler stated the American Psychiatric Institute Self-Assessment Examination has been accepted by the Board only with applications by endorsement. The statute states the requirements, but it is difficult to tell whether all requirements are specifically met by the examination. However, since it has been recommended for use, he would be inclined to approve it due to the nature of the specialty.

Ms. Krotke stated the License Specialists wanted to ensure the Board was comfortable with it, as applications for licensure by endorsement are being received more frequently now. There are a number of other examinations they can take and peer review is an option, so this would be one more alternative.

Dr. Baepler moved to accept the American Psychiatric Institute Self-Assessment Examination as a means for Psychiatrists to qualify for regular licensure when the application is by endorsement.

Dr. Titus stated she was uncomfortable with it.

Dr. Lubritz suggested writing to the ABMS and ask its opinion whether the American Psychiatric Institute Self-Assessment Examination is appropriate to examine their physicians.

Dr. Baepler stated he agreed and withdrew his motion.

Dr. Lubritz moved that Board staff correspond with the ABMS and ask the status of the American Psychiatric Institute Self-Assessment Examination, and that the Board refuse to accept the examination until receiving a response from the ABMS. Dr. Titus seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Agenda Item 15 (CONTINUED)

REPORTS

- Diversion Program: *Quarterly Report* - Timothy D. Coughlin, M.D., President;
Bradley J. Thompson, M.D., Medical Director; Arne D. Rosencrantz, Director, Nevada Health Professionals Assistance Foundation
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- Secretary-Treasurer - Donald H. Baepler, Ph.D., D.Sc., Secretary-Treasurer
 - Status of Finances

**INVESTIGATIVE COMMITTEES – Donald H. Baepler, Ph.D., D.Sc., Secretary-Treasurer, Chairperson
Joel N. Lubritz, M.D., Chairperson
Richard Legarza, General Counsel; Stephen D. Quinn, Deputy General Counsel; Douglas C. Cooper, Chief Investigator**

- Consideration of Cases Recommended for Closure by the Committees
- Status of Investigative Case Load
- Status of Recruitment of Peer Reviewers

Douglas C. Cooper, Chief Investigator, told the Board the Investigations Division currently has 636 open cases. Ninety-seven cases, which all appear to be minor, have been held in abeyance because they cannot handle them all with the current staff. The current workload is approximately 108 cases per Investigator. With the addition of two additional Investigators, that will drop to 72 cases per Investigator, which will be manageable. Many cases are easily resolved because they are duplicates, ie., an Investigator investigates a citizen complaint and then receives the same case through a court filing.

Mr. Cooper stated preparation for peer reviews is the next largest time-consuming project. In 2002, there were 40 peer reviews; there were 49 as of July 1, 2003, 80 in December 2003 and there are currently 159 pending. Of these, 103 need to be conducted. These do not include peer reviews for the Licensing Division.

Mr. Cooper explained that in 2003 there were 61 civil court filings and out of those 61, 50 to 60% included multiple physicians. Investigations has to open a file on each physician involved. He believes the court cases are leveling off, so with the new staff, each Investigator should have a caseload of 40 or 50 cases by this time next year.

A discussion ensued concerning peer reviews and the procedure for same.

Mr. Quinn explained it is difficult to find peer reviewers. Generally, the Board uses in-state physicians, and there can be a fear of professional ostracism. Staff will continue to encourage in-state physicians to act as peer reviewers, but there may be instances when it will be necessary to look outside the state.

Dr. Montoya moved to approve the Investigative Committee Reports. Dr. Jones seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

RECESS

Dr. Hug-English recessed the meeting for lunch at 12:35 p.m.

RECONVENE

Dr. Hug-English reconvened the meeting at 1:05 p.m.

Agenda Item 22

APPEARANCES FOR CONSIDERATION OF ACCEPTANCE OF APPLICATIONS FOR LICENSURE

CLOSED SESSION

22(a) William Torch, M.D.

Upon returning to open session, Dr. Titus moved to accept Dr. Torch's application as supervising physician for APN Monette Martin. Mrs. Kirch seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Agenda Item 18

CONSIDERATION OF PROPOSAL FOR SETTLEMENT IN THE MATTER OF THE ELLIOTT D. SCHMERLER, M.D. VS. NEVADA STATE BOARD OF MEDICAL EXAMINERS, CASE NO. 42363 (MEDIATION, NEVADA SUPREME COURT)

Adjudicating Board Members: Cheryl A. Hug-English, M.D., President; Jacqueline C. Jones, Ed.D., Vice President; Joel N. Lubritz, M.D.; Robin L. Titus, M.D.; Marlene J. Kirch; Sohail U. Anjum, M.D. and Javid Anwar, M.D.

All of the adjudicating Board members were present.

Mr. Clark summarized the mediation of this case. He told the Board that during the mediation, Dr. Schmerler made an offer to surrender his license while under investigation, with prejudice, meaning he would never again apply for a license in the state of Nevada. He told the Board he and Mr. Quinn were not in favor of accepting the offer, but told the mediator they

would present it to the Board. They are concerned that acceptance of the offer could lead to another D'Ambrosio-type situation.

Mr. Quinn recapped the circumstances surrounding the revocation of Dr. Schmerler's license by the Board.

A discussion of Dr. Schmerler's offer and the possible ramifications of acceptance ensued.

Dr. Schmerler's attorney spoke on behalf of Dr. Schmerler, and Dr. Schmerler explained what he has done to keep current in the medical profession.

Dr. Lubritz moved to reject Dr. Schmerler's settlement offer in the mediation of the case. Mrs. Kirch seconded the motion, and Dr. Hug-English took a roll call vote, with the adjudicating Board members voting as follows:

Dr. Jones:	yea
Dr. Lubritz:	yea
Dr. Titus:	yea
Mrs. Kirch:	yea
Dr. Anjum	nay
Dr. Anwar:	yea
Dr. Hug-English	yea

The settlement offer in the matter of *Elliott D. Schmerler, M.D. vs. Nevada State Board of Medical Examiners*, Case No. 42363, Nevada Supreme Court, was rejected.

Agenda Item 12

DISCUSSION OF CONVERSION FROM RESTRICTED LICENSE STATUS TO UNRESTRICTED LICENSE STATUS (NEVADA REVISED STATUTES CHAPTER 630.164(C)(3) & (D))

- Lynnette L. Krotke, Chief License Specialist

Ms. Krotke explained that this agenda item was prompted by a letter received from Robert Platt, M.D., requesting conversion of his license from restricted status to unrestricted status. He is currently county-restricted in Elko because he only had one year of post-graduate training, but we are in a position today that he could possibly be licensed under the new statute. He has completed four years of part-time practice in Elko, which would not normally meet the requirement to obtain an unrestricted license, i.e., three years full-time practice. However, under the new statute, he meets the requirements because he is Board certified in Emergency Medicine.

Dr. Titus moved to grant an unrestricted license to Dr. Platt. Dr. Lubritz seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Agenda Item 13

DISCUSSION OF QUESTIONABLE EDUCATIONAL STANDARDS OF CARIBBEAN (FOREIGN) MEDICAL SCHOOLS, PURSUANT TO NEVADA REVISED STATUTES CHAPTER 630.130 AND NEVADA ADMINISTRATIVE CODE SECTION 630.050

- Lynnette L. Krotke, Chief License Specialist

Ms. Krotke explained that the License Specialists have been receiving a lot of information on the foreign medical schools included in the information provided to the Board in their meeting packets, as well as Mexican medical schools, and they want to confirm whether the Board wants to license applicants from these schools. These applicants typically have had problems passing USMLE. The number of attempts is remarkable and scores are low. The schools in question are in the World Health Organization book, but some other states already do not accept these schools.

Mr. Lessly added that the Board cannot license someone unless he/she graduated from a medical school with the same standards as American medical schools.

Dr. Hug-English directed Ms. Krotke to continue to bring these applicants before the full Board. Additionally, the Board would like the License Specialists to note in bold type questionable schools, as well as any other problematic areas they see when reviewing applications.

Agenda Item 14

BOARD WEBSITE: www.medboard.nv.gov REPORT

- Laurie L. Munson, Deputy Executive Secretary
 - Status of Website Update Project
 - Status of Addition of Licensees' Educational History and Other Enhancements to Licensee Search Module

- Status of Website Update Project

Ms. Munson advised the Board that the Board's website is now in full compliance with all statutory requirements, and she is working to make the website more user-friendly for the public and the Board's licensees. She summarized recent additions to the site, which include: addition of an FAQs section, addition of a link to the Inspector General's Office and other agencies, addition of forms sections for both licensees and consumers, addition of a listing of licensees, in alphabetical order, who have received disciplinary action from the Board, and a section which includes some of the Board's financial documents. A hit counter has also been added to the website, to allow the Board to track the number of visits to its website. She told the Board that staff has plans to upgrade the search module so that a search can be made by geographical area or scope of practice, as well as by physician name, and that she has some other ideas for improvements to the website which she will bring to the Board at a later date.

- Status of Addition of Licensees' Educational History

Ms. Munson told the Board that pursuant to its direction, a full-time temporary employee was hired through Kelly Services in late December to review the Board's licensee files and compare the educational information contained therein to that in the Board's database to verify the accuracy of the information and correct any errors in the database. The temporary

employee has currently completed approximately 30% of the work, and staff anticipates completion of that work in approximately 4 months, at which time the information will be added to the website.

Agenda Item 16

- EXECUTIVE STAFF REPORTS**
- Larry D. Lessly, J.D., Executive Secretary/Special Counsel
Drennan A. Clark, J.D., Deputy Executive Secretary/
Special Counsel
Laurie L. Munson, Deputy Executive Secretary
Lynnette L. Krotke, Chief License Specialist
 - Consideration of Request for Staff Attendance at Educational Meetings
 - Federation of State Medical Boards New Executives' Orientation, June 28-29, 2004
(Drennan A. Clark, Deputy Executive Secretary/Special Counsel & Laurie L. Munson, Deputy Executive Secretary)
 - Washoe County Medical Society Spring Mini Internship Program, Apr. 21-28, 2004
(Trent Hiett, Investigator; & Jennifer Sloan, Investigator)
 - Update on Video-Conferencing Equipment and Training
 - Report on Status of Renewal Registration of Practitioners of Respiratory Care
 - Consideration of Physicians' Use of Credentialing Entities Regarding Licensure Applications
 - Informational Items

- Informational Items

Mr. Clark requested the Board members provide him with any additional items they would like included in a proposed legislation packet for discussion at the June meeting.

- Consideration of Request for Staff Attendance at Educational Meetings

Mr. Clark requested authority for Investigators Trent S. Hiett and Jennifer K. Sloan to attend the Washoe County Medical Society Spring Mini Internship Program in Reno April 21-28, 2004.

Mr. Clark requested authority for Financial Support Assistant Deborah E. Swartz to attend a State Personnel Training Session in May.

Mr. Clark requested authority for he and Ms. Munson to attend the Federation of State Medical Boards New Executives Orientation in Dallas on June 28-29, 2004.

Motion by Dr. Baepler to authorize attendance at the aforementioned educational meetings as discussed. Mrs. Kirch seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

- Report on Status of Renewal Registration of Practitioners of Respiratory Care

Ms. Krotke stated the Licensing Division received no response to the first mailing in October 2003. The second mailing went out in January 2004 and to date 794 Practitioners of Respiratory Care have renewed, 10 have requested non-renewal, 144 have been suspended for non-payment and 5 have reinstated. She thinks most of the 144 are travelers, as the License Specialists have made numerous unsuccessful attempts to reach them.

- Consideration of Physicians' Use of Credentialing Entities Regarding Licensure Applications

Ms. Krotke told the Board the Licensing Division has issues with other credentialing entities that are not as serious as those with U.S. Medical Licensing, but they want to make the Board aware of these issues and request the Board's direction. She stated that some credentialing entities are doing a good job and may be helpful about 10 percent of the time, but 90 percent of time they only complicate the process.

Dr. Hug-English directed Ms. Krotke to bring any other credentialing entities with problems that rise to the level of U.S. Medical Licensing to the Board's attention for a determination as to whether the Board wants to accept applications from those entities.

Agenda Item 17

- LEGAL REPORTS** - Richard J. Legarza, J.D., General Counsel
Stephen D. Quinn, J.D., Deputy General Counsel
Charlotte M. Bible, J.D., Chief Deputy Attorney General
- Board Ordered Terms, Conditions and Probation Status
 - Board Litigation Status

Mr. Quinn stated the Board currently has four cases pending in court. In the *Alan Mishler* case, the Ninth Circuit Court of Appeals affirmed the District Court's decision to grant summary judgment to the Board. Dr. Mishler has until March 20 to file a petition for Certiorari or request a rehearing.

In the *Robert Rutledge* case, Dr. Rutledge filed a petition for judicial relief on March 8, 2004, and the District Court reversed the Board's denial of Dr. Rutledge's license application. Mr. Quinn has prepared a notice of appeal for review by the Nevada Supreme Court. He thinks Dr. Rutledge would like to come back the Board to see if there is any way to reconcile differences and obtain a license. Mr. Quinn requested the matter be placed on the Board's June agenda.

The *Kenneth Mower* case is on appeal with the Nevada Supreme Court. It is currently scheduled for mediation, but Mr. Quinn thinks it will be taken off the mediation calendar and move forward.

John H. DeTar, M.D. has filed an action against the Board to mandate the Board to investigate a hospital credentialing committee that conducted a review against him concerning a statement regarding quality of care. Mr. Quinn has taken the position that the Board has no jurisdiction, and has filed a response.

Agenda Item 19

CONSIDERATION OF REQUEST BY NEVADA STATE MEDICAL ASSOCIATION (NSMA) FOR APPOINTMENT OF BOARD MEMBER TO ACT AS LIAISON TO THE NSMA

- Cheryl A. Hug-English, M.D., President

Weldon Havins, M.D. stated the Nevada State Medical Association meetings occur simultaneously in northern and southern Nevada by teleconference.

Dr. Montoya volunteered to act as liaison between the Board and the NSMA.

Dr. Hug-English stated it may be a rotating position.

Agenda Item 21

LICENSURE RATIFICATION

- Ratification of Licenses Issued, and Reinstatements of Licensure and Changes of Licensure Status Approved, Since the December 5 & 6, 2003 Board Meeting
- License Application and Malpractice Review Committee Licenses Issued Since the December 5 & 6, 2003 Board Meeting

Dr. Baepler moved to ratify the licenses issued, and reinstatements of licensure and changes of licensure status approved, since the December 5 & 6, 2003 Board meeting. Dr. Jones seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Agenda Item 20

CONSIDERATION OF REQUEST TO RESCHEDULE DECEMBER 2004 BOARD MEETING DATES

- Joel N. Lubritz, M.D.

Dr. Lubritz requested the Board consider rescheduling the December 2004 Board meeting, but after brief discussion withdrew his request.

Agenda Item 23

MATTERS FOR FUTURE AGENDA

Mr. Clark mentioned three items that would be on the June meeting agenda: (1) proposed legislative initiatives packet; (2) staff evaluations and compensation; and (3) election of officers and appointment to committees.

Agenda Item 22

(Continued)

APPEARANCES FOR CONSIDERATION OF ACCEPTANCE OF APPLICATIONS FOR LICENSURE

Dr. Jones moved to go into Closed Session to discuss the character and professional competence of applicants for licensure approval. Mrs. Kirch seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

22(b) Armin Vishteh, M.D.

Upon returning to Open Session, Dr. Baepler moved to allow Armin Vishteh, M.D. to withdraw his application without prejudice. Dr. Montoya seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Dr. Anjum moved to return to Closed Session for the same purposes stated before. Dr. Montoya seconded the motion, and it passed unanimously.

22(c) Frank Toppo, M.D.

Upon returning to Open Session, Dr. Anjum moved to approve Frank Toppo, M.D.'s application for an unrestricted license. Dr. Montoya seconded the motion, and it carried unanimously, with the Chair voting in favor of the motion.

Mrs. Kirch moved to return to Closed Session for the same purposes stated before. Dr. Jones seconded the motion, and it passed unanimously.

22(d) Frank Stile, M.D.

Upon returning to Open Session, Dr. Lubritz moved that the Board accept Frank Stile, M.D.'s application for unrestricted licensure due to his successful passage of a peer review. Dr. Anwar seconded the motion, and it passed unanimously, with the Chair voting in favor.

Mrs. Kirch moved to return to Closed Session for the same purposes stated before. Dr. Jones seconded the motion, and it passed unanimously.

22(e) William Summers, M.D.

Upon returning to Open Session, Dr. Anjum moved that the Board decline to exercise its discretion to issue a license to William Summers M.D. by endorsement at this time because of new information provided by Dr. Summers that requires investigation, and that Dr. Summers can sit for a peer review in the meantime and the Board can consider an application for unrestricted licensure at the June Board meeting. Dr. Titus seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

22(f) Brian Heiter, R.R.T.

Upon returning to Open Session, Dr. Montoya moved to accept Brian Heiter, R.R.T.'s application for licensure. Dr. Baepler seconded the motion, and it passed unanimously, with the Chair voting in favor.

Mrs. Kirch moved to return to Closed Session for the same purposes stated before. Dr. Titus seconded the motion, and it passed unanimously.

22(g) Joseph Teichgraeber, M.D.

Upon returning to Open Session, Dr. Titus moved that the Board grant Joseph Teichgraeber, M.D.'s application for licensure. Dr. Baepler seconded the motion, and it passed unanimously, with the Chair voting in favor.

Dr. Titus moved to return to Closed Session for the same purposes stated before. Dr. Baepler seconded the motion, and it passed unanimously.

22(h) Jeffrey Tennant, M.D.

Upon returning to Open Session, Dr. Lubritz moved that the Board grant Jeffrey Tennant, M.D.'s application for unrestricted licensure subject to his successful passage of a peer review, at his own expense. Dr. Montoya seconded the motion, and it passed unanimously, with the Chair voting in favor.

Dr. Titus moved to return to Closed Session for the same purposes stated before. Dr. Jones seconded the motion, and it passed unanimously.

22(i) Edward Gray, M.D.

Upon returning to Open Session, Dr. Montoya moved that the Board grant Edward Gray, M.D.'s application for licensure. Dr. Titus seconded the motion, and it passed, with Dr. Baepler and Dr. Lubritz abstaining and the Chair voting in favor.

Mrs. Kirch moved to return to Closed Session for the same purposes stated before. Dr. Montoya seconded the motion, and it passed unanimously.

22(j) Lillian Cavin, M.D.

Upon returning to Open Session, Mrs. Kirch moved that the Board grant Lillian Cavin, M.D.'s application for Special Purpose licensure. Dr. Titus seconded the motion, and it passed unanimously, with the Chair voting in favor.

Dr. Jones moved to return to Closed Session for the same purposes stated before. Mrs. Kirch seconded the motion, and it passed unanimously.

22(k) Edgar Clark, M.D.

Upon returning to Open Session, Dr. Baepler moved that the Board approve Edgar Clark, M.D.'s application for unrestricted licensure, subject to his successful passage of a peer review, at his own expense. Dr. Jones seconded the motion, and it passed unanimously, with the Chair voting in favor.

Mrs. Kirch moved to return to Closed Session for the same purposes stated before. Dr. Jones seconded the motion, and it passed unanimously.

22(l) Charles Williams, M.D.

Upon returning to Open Session, Dr. Montoya moved that the Board approve Charles Williams, M.D.'s application for licensure. Dr. Anwar seconded the motion, and it passed, with Dr. Titus and Mrs. Kirch opposed and the Chair voting in favor of the motion.

Dr. Baepler moved to return to Closed Session for the same purposes stated before. Dr. Anwar seconded the motion, and it passed unanimously.

22(m) Babu Nahata, M.D.

Upon returning to Open Session, Dr. Titus moved to grant Babu Nahata, M.D.'s application for licensure. Dr. Baepler seconded the motion, and it passed, with Mrs. Kirch opposed and the Chair voting in favor of the motion.

Mrs. Kirch moved to return to Closed Session for the same purposes stated before. Dr. Montoya seconded the motion, and it passed unanimously.

22(n) Stefan Semchyshyn, M.D.

Upon returning to Open Session, Dr. Montoya moved that the Board decline to exercise its discretion to issue a license to Stefan Semchyshyn, M.D. by endorsement because Dr. Semchyshyn cannot cite any extenuating circumstances that would compel the Board to waive the requirements for licensure. Mrs. Kirch seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

RECESS

Dr. Hug-English recessed the meeting at 6:40 p.m.

SATURDAY, MARCH 13, 2004

Board Members Present

Cheryl A. Hug-English, M.D., President
Jaculine C. Jones, Ed.D., Vice President
Donald H. Baepler, Ph.D., D.Sc., Secretary-Treasurer
Robin L. Titus, M.D.
Marlene J. Kirch
Stephen K. Montoya, M.D.
Sohail U. Anjum, M.D.
Javaid Anwar, M.D.

Staff Present

Larry D. Lessly, J.D., Executive Secretary/Special Counsel
Drennan A. Clark, J.D., Deputy Executive Secretary/Special Counsel
Laurie L. Munson, Deputy Executive Secretary
Richard J. Legarza, J.D., General Counsel
Stephen D. Quinn, Deputy General Counsel
Lynnette L. Krotke, Chief License Specialist
Trent S. Hiett, Investigator (present in Las Vegas)

RECONVENE

Cheryl A. Hug-English, M.D., President, reconvened the meeting at 8:35 a.m.

Agenda Item 8 **(CONTINUED)**

CONSIDERATION OF CONTINUATION OF CONTRACT WITH NEVADA BROADCASTERS ASSOCIATION FOR THE BOARD'S PUBLIC SERVICE ANNOUNCEMENT PROGRAM FOR APRIL 1 THROUGH JUNE 30, 2004

- Robert D. Fisher, President and CEO - Nevada Broadcasters Association

Mr. Legarza explained that the current contract is for three months. He suggested the Board renew that contract for an additional three months for now, work on the content of the new scripts, and make a decision on a new contract at the June meeting.

Dr. Montoya moved to continue the contract as is through June and work to enter into a yearly contract after that. Dr. Baepler seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

AGENDA ITEM 13 (CONTINUED)

Appearances for Consideration of Acceptance of Applications for Licensure

Mr. Lessly told the Board that Cesar Noche, M.D. has arrived at the Board office to appear before the Board on his application for licensure; however, he is not on the agenda, and therefore the Board cannot consider his application for licensure at this time.

Ms. Krotke explained that the Licensing Division has never spoken with Dr. Noche; they have dealt with a credentialing agency. The credentialing agency was advised that Dr. Noche could appear when his file was completed, but his file has not been completed.

Mrs. Kirch moved to go into Closed Session to discuss the character and professional competence of applicants for licensure approval. Dr. Jones seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

CLOSED SESSION

22(o) Lo Fu Tan, M.D.

Upon returning to Open Session, Dr. Anwar moved to grant Lo Fu Tan, M.D.'s application for licensure. Dr. Montoya seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Dr. Montoya moved to return to Closed Session for the same purposes stated before. Mrs. Kirch seconded the motion, and it passed unanimously.

22(p) Lynn Ulevich, P.A.-C

Upon returning to Open Session, Dr. Montoya moved to grant Lynn Ulevich, P.A.-C's application for licensure with the provision that upon her employment, she send the office protocols to the Board and that her supervising physician provide a follow-up letter to the Board in three months regarding her status. Mrs. Kirch seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Dr. Titus moved to return to Closed Session for the same purposes stated before. Dr. Jones seconded the motion, and it passed unanimously.

22(q) Steven Berger, M.D.

Upon returning to Open Session, Dr. Baepler moved to approve Steven Berger, M.D.'s application for unrestricted licensure. Dr. Jones seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Dr. Titus left the meeting at 9:30 a.m.

Dr. Anwar moved to return to Closed Session for the same purposes stated before. Dr. Jones seconded the motion, and it passed unanimously.

22(s) Shawn McGivney, M.D.

Upon returning to Open Session, Dr. Jones moved to accept Shawn McGivney, M.D.'s application for unrestricted licensure. Dr. Anwar seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Dr. Anjum moved to return to Closed Session for the same purposes stated before. Mrs. Kirch seconded the motion, and it passed unanimously.

22(x) Ludwig Kroner, M.D.

Upon returning to Open Session, Dr. Baepler moved to accept Ludwig Kroner, M.D.'s application for unrestricted licensure, subject to his successful passage of peer review, at his own expense. Mrs. Kirch seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Mrs. Kirch moved to return to Closed Session for the same purposes stated before. Dr. Jones seconded the motion, and it passed unanimously.

22(v) Donald Kozil, M.D.

Upon returning to Open Session, Dr. Montoya moved to accept Donald Kozil, M.D.'s application for unrestricted licensure, subject to his successful passage of a peer review, at his expense. Dr. Baepler seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Dr. Anjum moved to return to Closed Session for the same purposes stated before. Dr. Baepler seconded the motion, and it passed unanimously.

22(w) Robert Lewis, M.D.

Upon returning to Open Session, Dr. Baepler moved to approve Robert Lewis, M.D.'s application for unrestricted license, subject to verification of his recertification or successful passage of a peer review. Mrs. Kirch seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Agenda Item 23 **(CONTINUED)**
MATTERS FOR FUTURE AGENDA

Dr. Hug-English stated there were two additional matters for the June meeting agenda: (1) consideration of the contract with Nevada Broadcasters Association; and (2) Dr. Rosin's request for issuance of limited licenses to residents to perform medical screening services.

Agenda Item 24
PUBLIC COMMENT

There was no public comment.

ADJOURNMENT

Motion by Dr. Baepler to adjourn. Dr. Jones seconded the motion, and it passed unanimously, with the Chair voting in favor of the motion.

Dr. Hug-English adjourned the meeting at 10:55 a.m.